

STATE OF INDIANA)
) SS:
COUNTY OF CLAY)

Superior

IN THE CLAY ~~CIRCUIT~~ COURT
CAUSE NO. 11D1-0610-M1-443

IN RE: TERRY NEES and
 SUSAN NEES,

 Respondents.

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AVC NO 06-035

ASSURANCE OF VOLUNTARY COMPLIANCE

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Matt Light, and the Respondents, Terry Nees and Susan Nees, enter into an Assurance of Voluntary Compliance (Assurance), pursuant to Ind. Code §23-7-8-9 and Ind. Code § 24-5-0.5-7.

Any violation of the terms of this Assurance constitutes prima facie evidence of a deceptive act. This Assurance is entered into without any adjudication of any issue of fact or law, and upon consent of the parties.

The parties agree:

1. Respondents are engaged in the business of selling fireworks, with a principal place of business at 8614 East State Road 42, Poland, Indiana 47868, and transact business with Indiana consumers.

2. The Division has jurisdiction to investigate the matters hereinafter described, pursuant to the authority of Ind. Code §§ 4-6-9-4, 23-7-8-8, and 24-5-0.5-4.

3. The terms of this Assurance apply to and are binding upon Respondents, their employees, agents, representatives, successors, and assigns.

4. Any term used in this Assurance that is explicitly defined by Ind. Code § 23-7-8-1 or Ind. Code § 24-5-0.5-2 has the meaning set forth by those statutes.

5. Respondents will not sell, offer, or attempt to sell fireworks or other tangible items in connection with which any appeal is made for any charitable organization or purpose; where the name of any charitable organization is used or referred to in any appeal made for any charitable organization as an inducement or reason for making the sale; or when or where in connection with the sale any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization; unless Respondents have complied in all aspects with the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-1 et seq.

6. Respondents will not:

i. misrepresent to anyone that a contribution or the proceeds from a payment for goods will be used for a charitable purpose if they have reason to believe the contribution or proceeds will not be used for a charitable purpose;

ii. misrepresent to anyone that another person endorses a solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation; or

iii. misrepresent to anyone that a contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation.

7. Respondents, in soliciting and/or contracting with Indiana consumers, agree to comply in all aspects with the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq.

8. Respondents agree to refrain from representing that a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which Respondents know or should reasonably know it does not have.

9. Respondents agree to refrain from representing that they have a sponsorship, approval, or affiliation with respect to a consumer transaction that they do not have, and which the Respondents know or should reasonably know they do not have.

10. Upon execution of this Assurance, Respondents shall pay costs in the amount of Five Hundred Dollars (\$500.00) to the Office of the Attorney General.

11. In the event that Respondents violate the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 et seq., or the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-1 et seq., on or after the date this Assurance is approved by the Circuit Court of Clay County, Respondents shall pay an agreed-upon stipulated penalty of Five Hundred Dollars (\$500.00) for each statutory violation.

12. Respondents agree to make full payment of the stipulated penalty referenced in paragraph eleven (11) to the Office of Indiana Attorney General within thirty (30) days after being advised in writing by the Division of any statutory violations. Any such payments will be deposited by the Division in the Consumer Fees and Settlements Fund.

13. The stipulated penalty provision referenced in paragraph eleven (11) shall be effective for a period of five (5) years from the date this Assurance is approved by the Circuit Court of Clay County.

14. Respondents shall not represent that the Office of the Attorney General approves or endorses Respondents' past or future business practices, or that execution of this Assurance constitutes such approval or endorsement.

15. Respondents shall fully cooperate with the Office of the Attorney General in the resolution of any future written complaints the Consumer Protection Division receives.

16. The Office of the Attorney General shall file this Assurance with the Circuit Court of Clay County. The Court's approval of this Assurance shall not act as a bar to any private right of action.

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DATED this 14th day of October, 2006.

STATE OF INDIANA

RESPONDENTS

STEVE CARTER
Attorney General of Indiana

TERRY NEES and SUSAN NEES

by:

Matt J. Light
Matt Light
Deputy Attorney General
Attorney No. 25680-53

Terry W. Nees
Terry Nees

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Susan Nees
Susan Nees

APPROVED, this 27th day of Oct., 2006.

J. R. Al
Judge, Clay County Circuit Court
Supervisor